IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 27-05-1996

CRIMINAL APPEAL No. 657 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RAMAJI CHHAGANJI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR NS DESAI Advocate for the Petitioner.

SHRI MA. BHUKHARI, PUBLIC PROSECUTOR for Respondent.

CORAM : H.R.SHELAT, J.

27/05/96

ORAL JUDGEMENT

The appellant, the original accused No.1 came to be convicted of the offence under Section 436 read with 114 of the Indian Penal Code and sentenced to rigorous imprisonment for 6 months and a fine of Rs.200/-; in default rigorous imprisonment for 15 days more by the then learned Additional Sessions Judge, Kheda at Nadiad in Sessions Case No. 36 of 1986; consequent upon which

the present appeal has been filed challenging the conviction and sentence.

2. Khushalbhai Chandabhai residing at Vasana village-Vasana in Kapadwanj Taluka of Kheda district is having agricultural land wherein he resides also. He is having another house in the village where he goes for sleeping purpose during night time. During monsoon of 1985 he had sown gowar in his field. For the purpose of necessary agricultural operation and keeping a watch on the crop he used to remain in the field. On 1st November 1985 at 4.00 p.m. appellant's cattle had entered into his field and caused damage to the standing crop giving raise to a quarrel and dissension between the two. On the same day at 7.45 p.m., Khushalbhai Chandabhai had gone to his house in the village. When he reached home he saw the appellant, Rukhiben, Ramaji Chhaganji and Lalabhai Ramabhai standing on the back of his house. It may be stated at this stage that these three persons are having their house on the back of house of Khushalbhai Chandabhai. Khushalbhai Chandabhai has erected on the back projecting shed made of leaves, grass and castor sticks so as to protect the wall and have comfortable use and occupation. The appellant and his two cronies were enraged because of the incident that took place after 4.00 p.m. on that day in connection with cattle grazing. They therefore lit the match box and threw it on the shed (Taratu) where bundles of grass were stored. Immediately the grass caught fire and the shed was soon on fire. Khushalbhai Chandabhai shouted for help. Zinabhai Khodabhai and Manchhaben hearing the shouts rushed to the scene of offence. Zinabhai could see Chhanaji Kurshi, the appellant and two others running away. Manchhaben Dharmabhai gathering information from Khushalbhai knew that the appellant and two others set the fire and had fled. The fire was then extinguished. A complaint before the Kathlal police station was then lodged putting the police investigation to motion. At the end of the police investigation the chargesheet of the offence under Sec. 436 read with Section 114 of the Indian Penal Code was presented before the Court of the learned Judicial Magistrate (F.C.) at Kapadwanj against the appellant and two others named hereinabove. The learned Magistrate being incompetent in law to try, committed the case to the Court of Sessions, Kaira at Nadiad which came to be registered as Sessions Case No. 36 of 1986. The then learned Sessions Judge assigned the matter to the then learned Additional Sessions Judge, Kaira at Nadiad for hearing and disposal in accordance with law. The then learned Additional Sessions Judge framed the charge at Exh.2 to which the appellant and his cronies pleaded not

guilty. The prosecution then led necessary evidence. Appreciating the evidence on record, the learned Judge below found that the prosecution had succeeded in establishing the charge against the appellant and not against rest of the two accused. He therefore acquitted the other two accused, but convicted the appellant and sentenced him as aforesaid. It is against that order the appellant has preferred this appeal.

3. Mr. Desai, the learned Advocate representing the appellant submitted that the learned Judge below did not appreciate the evidence in correct perspective. He fell into error in appreciating the evidence and reached a conclusion not at all warrantable. The learned Judge based the conclusion only on the evidence of Kushalbhai Chandabhai but his evidence was not free from doubt. When evidence on record was perused certain inherent improbabilities could be seen but the learned Judge below overlooked the same and convicted the appellant. A motive was also not established and the case about setting fire was, looking to the evidence, highly suspicious.

4. Mr. Bhukhari, the learned Additional Public Prosecutor representing the State submitted that there was no infirmity, and it was open to the court to base the conclusion only on the evidence of the sole eye-witness namely the complainant. Even if motive was not established, and when there was direct evidence, non-establishment of the motive would lose the value.

5. I agree with the learned Additional Public Prosecutor that it is open to the court to base the conclusion even on the basis of the evidence of the sole eye-witness, but before reliance is placed,court has to examine the evidence with meticulous care and finicky details, and after doing so the evidence if found free from doubt and appealing to the conscious of the court, certainly it can be acted upon and necessary conclusion emanating therefrom can be drawn; may be even conviction of the accused.

6. Before I proceed to dissect the merits of the evidence on record it may be stated that when there is direct evidence available, the question of motive would lose the value. In this case as there is direct evidence available even if the motive is not established it will not be fatal to the prosecution. In this case according to the prosecution at 4.00 p.m. or thereafter the incident with regard to cattle grazing took place and therefore the appellant and his cronies retaliated. Of

course the evidence about the incident alleged to have taken place at 4.00 p.m. or thereafter is not sufficient on record but non-establishment of motive with certainty is not fatal to the prosecution when direct evidence is available. It may however be stated that direct evidence on which the prosecution relies is not free from doubt and credible.

7. Khushalbhai Chandabhai seeing his house on fire shouted for help. Zinabhai Khodabhai and Manchhaben Dharmabhai reached the scene of offence . They have not seen the appellant or his cronies igniting the match box and setting fire to the house of Khushalbhai. Zinabhai Khodabhai saw the appellant scudding but he has not stated so before the police. It seems he made improvements at the time when his evidence was recorded by the court. When witness comes before the court with suitable improvements his say cannot be accepted without any independent corroboration. Manchhaben Dharmabhai did not see the incident and she does not have personal knowledge about the real culpirits. She gathered the information from the complainant, Khushalbhai Chandabhai. Under the circumstances the evidence of Khushalbhai Chandabhai being the only material on record has to be closely scrutinised. How the complainant remaining on the front side of his house could see the appellant igniting match stick on the back is not explained. Whether appellant was within visible range is not stated. According to the complainant he tried to extinguish the fire and according to Manchhaben no one helped the complainant in extinguishing the fire. Even Manchhaben also did nothing though she is the aunt of the complainant. Zinabhai Khodabhai also did not help in getting the fire extinguished. The complainant did not have enmity with those two persons and other neighbours. If at all the house was put to fire certainly the neighbours who gathered there hearing the shouts few of them would have helped the complainant in extinguishing the fire but as no one has helped him the evidence on record raises a suspicion about happening of the incident. The police after reaching the place of offence did not find any mark of extinguishment of fire viz., water or dust or sand etc., and that also injures the credibility of the case of the prosecution. It is pertinent to note that according to the complainant he went to the police to lodge the complaint. Certain portion of the complaint was reduced into writing and thereafter the police officer went to the scene of offence. He came back and thereafter rest of the portion of the FIR was completed. This unusual act on the part of the police also in the absence of explanatory evidence

raises suspicion. The evidence of the complainant is thus not free from doubt.

8. There is also another point going to discredit the truth of the case of the prosecution. According to the appellant he was not present at the time when the incident happened. Right from 6.00 p.m. of 1-11-85 to 4.00 a.m. of the next day morning he was in the field and was irrigating his crop taking water from the Well of Dhulabhai Punambhai. He has thus pleaded alibi. Dhulabhai Punambhai is one of the panchas. He has been examined at Exh.11. He has supported the alibi advanced by the appellant and his statements supporting the appellant are not called in question by the prosecution putting necessary questions. Thus the case of alibi is established. It may be stated that the accused has to establish the case of alibi leading the evidence which would probabilise his say and he has not to establish the case with that rigour the prosecution is expected to establish the charge. In this case therefore the evidence of Dhulabhai Punambhai supporting the case of alibi is sufficient and nothing more can be expected in the support thereof as submitted by the prosecution.

9. It seems the abovestated both the points going to the root of the case have been overlooked by the learned Judge below and therefore the learned Judge fell into error and reached the wrong conclusion. The evidence on record is not sufficient to connect the appellant with the guilt leaving no room to doubt. Whatever doubts arise from the evidence on record, benefit thereof must go to the appellant which ought to have been by the lower court. Under the circumstances, the conviction and sentence inflicted cannot be maintained. With the result, the appeal is allowed. The conviction and sentence inflicted by the lower Court are hereby set aside and the appellant is acquitted of the charges levelled against him. Fine if paid be refunded.

9. The bail bonds executed by the appellant are hereby cancelled.

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